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Klima Barber Concession and United Food and Commercial Workers International Union, District Union Local 2. Case 17-CA-19058

October 10, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Union on March 11, 1997, the General Counsel of the National Labor Relations Board issued a complaint on May 23, 1997, against Klima Barber Concession, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 8, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On September 10, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 19, 1997, notified the Respondent that unless an answer were received by September 3, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a commercial enterprise, with its principal office located in Columbus, Georgia, has been engaged in business as a provider of barber services at the United States Army facility located at Ft. Leonard Wood, Missouri. During

the 12-month period ending April 30, 1997, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000, and purchased and received at its facility, products, goods, and materials valued in excess of \$5000 directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All barbers employed at the Respondent's barber shops at Ft. Leonard Wood, Missouri, excluding guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from December 1, 1994, to December 1, 1998 (the 1994-1998 agreement). At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About December 13, 1996, the Union filed grievances on behalf of bargaining unit employees Steve Drake and Floyd Auburn pursuant to the procedure set forth in article 18 of the 1994-1998 agreement, and, since that date, the Respondent has failed and refused to accept and to timely process those grievances.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused since about December 13, 1996, to accept and to timely process the grievances filed by Drake and Auburn on that date, we shall order the Respondent to

accept and process these grievances in accord with the provisions of the 1994–1998 agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Klima Barber Concession, Columbus, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to accept or to timely process grievances filed on behalf of the following unit employees pursuant to the procedure set forth in article 18 of the 1994–1998 agreement:

All barbers employed at the Respondent's barber shops at Ft. Leonard Wood, Missouri, excluding guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Accept and process the grievances filed by the Union about December 13, 1996, on behalf of Steve Drake and Floyd Auburn.

(b) Within 14 days after service by the Region, post at its facility in Fort Leonard Wood, Missouri, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 11, 1997.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 10, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to accept or to timely process grievances filed on behalf of the following unit employees pursuant to the procedure set forth in article 18 of the 1994–1998 agreement with the United Food and Commercial Workers International Union, District Union Local 2, effective from December 1, 1994, to December 1, 1998:

All barbers employed at our barber shops at Ft. Leonard Wood, Missouri, excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL accept and process the grievances filed by the Union about December 13, 1996, on behalf of Steve Drake and Floyd Auburn.

KLIMA BARBER CONCESSION